Supreme Court, U.S.
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NO. 05-

IN THE

Supreme Court of the United States

MICHAEL CHARROS,

Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE MASSACHUSETTS APPEALS COURT

PETITION FOR WRIT OF CERTIORARI

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Dated: June 29, 2005

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QUESTION PRESENTED FOR REVIEW

Whether the Supreme Judicial Court of Massachusetts has decided an important federal question in a way that conflicts with relevant decisions of this Court where, after finding an egregious and intentional violation of the principles set forth in *Michigan v. Summers*, 452 U.S. 692 (1981), the court nevertheless upheld the stop and search of the petitioner on separate grounds that were not supported by the record and that the prosecution had never raised at any stage in the proceedings.

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INTRODUCTION

The petitioner was convicted in a Massachusetts Superior Court of trafficking in 200 or more grams of cocaine and other related charges. He moved unsuccessfully to suppress the contraband and other evidence against him on the theory that the manner in which he was seized violated this Court's holding in *Michigan v. Summers*, 452 U.S. 692 (1981). The Supreme Judicial Court of Massachusetts agreed that the police had indeed violated the mandates of *Michigan v. Summers*, but found the violation of the petitioner's constitutional rights to be harmless. In so ruling, the court held that the police had probable cause to arrest the petitioner without a warrant—even though the police apparently did not believe they did. Because the police could have arrested the defendant, the seizure of the petitioner and the subsequent search of his person could be justified on alternative grounds. The petitioner seeks to challenge that point and respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Judicial Court, entered on March 31, 2005.

OPINIONS BELOW

The opinion and judgment of the Supreme Judicial Court of Massachusetts in *Commonwealth v. Charros*, 443 Mass. 752, 824 N.E.2d 809 (2005) is reproduced in the Appendix.

JURISDICTION

The order of the Massachusetts Supreme Judicial Court, affirming the petitioner's conviction and the denial of his post trial motions, was entered on March 31, 2005. The petitioner seeks review of a judgment by the highest State court in which a decision could be had and invokes this Court's jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the United States Constitution provides: "All person born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A. *Procedural History*

On October 1, 1998, a grand jury in Bristol County, Massachusetts returned indictments charging the petitioner Michael Charros with trafficking in 200 or more grams of cocaine, violation of the controlled substance laws in a school zone, conspiracy to violate the controlled substance laws, unlawful possession of a firearm without an ID card, and unlawful possession of ammunition without an ID card. (Indictments Nos. 9873CR0331A-E). The petitioner entered pleas of not guilty to all counts.

On December 21, 1998, the petitioner filed a motion to suppress all evidence relating to the execution of a search warrant and a motion to suppress evidence and statements based on an unlawful warrantless search and seizure. A justice of the Massachusetts Superior Court (Tierney, J.) conducted an evidentiary hearing on the motions to suppress on August 11, 1999 and October 14, 1999. Judge Tierney issued a memorandum of decision and order denying those motions on December 29, 1999. [Appendix 52a-62a].

The defendant applied to the Supreme Judicial Court of Massachusetts for leave to file an interlocutory appeal. A single justice of that court, Ireland, J., denied the defendant's application on February 7, 2000.

On March 13, 2000, the defendant filed a motion seeking to reopen the hearing on his

motion to suppress evidence and statements on grounds unrelated to this petition. Judge Tierney held an evidentiary hearing on the motion on May 30, 2001. On June 11, 2001, he issued a memorandum of decision and order again denying the motion to suppress statements and evidence.

On December 12, 2001, trial commenced in the Superior Court before Brady, J., and a jury on all counts except the conspiracy count. Judge Brady directed a verdict for the defendant on the firearm and ammunition charges at the close of the Commonwealth's evidence. On December 21, 2001, the jury returned verdicts of guilty on the trafficking and school zone charges. On the trafficking count, Judge Brady sentenced the defendant to fifteen years to fifteen years and a day. He imposed a consecutive two and a half year House of Correction sentence on the school zone count.

The defendant filed a timely notice of appeal on January 18, 2002. The case was entered on the docket of the Massachusetts Appeals Court on October 6, 2003. On October 22, 2004, an order issued transferring the case to the Supreme Judicial Court of Massachusetts.

On March 31, 2005, the Supreme Judicial Court affirmed the petitioner's conviction. *Commonwealth v. Charros*, 443 Mass. 752, 824 N.E.2d 809 (2005).

B. *Facts Presented At Trial*

For purposes of this petition, the petitioner will adopt the recitation of the Commonwealth's evidence as set forth in the opinion of the Supreme Judicial Court of Massachusetts:

> The jury could have found the following facts. On August 10, 1998, officers of the New Bedford police department obtained a search warrant for the first-floor apartment at 164 Query Street in New Bedford, the residence of Michael and Geraldine Charros.[3]
>
> After obtaining the search warrant, numerous officers in several cars positioned themselves at various locations around 164 Query Street. At approximately 5:45 P.M. a man other than Michael left the house and drove away. Shortly thereafter Michael was seen driving away in a white van. Some officers stopped the van approximately one mile away. Michael was ordered to step outside, and a patfrisk resulted in the discovery of two small paper folds containing cocaine. One fold was randomly selected for analysis and weighed 0.47 grams. It had a street value of $20 to $25. Michael was

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[3] They had a second warrant authorizing the search of a brown pick-up truck registered to Michael.